CENTENNIAL

OF THE

Supreme Court of Alabama

ANNUAL ADDRESS

BEFORE

Alabama State Bar Association

AT

Birmingham, Alabama

April 30, 1920

By JOHN C. ANDERSON

Wilson Print, Montgomery.

SEP 20 1929
D. of D.

JK4583
.A7

ANNUAL ADDRESS BY
HON. JOHN C. ANDERSON
OF MONTGOMERY

CENTENNIAL OF THE SUPREME COURT OF ALABAMA

When requested by your Executive Committee to read a paper at this meeting of your Association, I accepted the invitation, and concluded that as this was the one hundredth anniversary of the establishment and organization of our Supreme Court, in fact our judicial system, that a paper on this subject would not only be of interest to the profession, but would be most appropriate at this particular time. It was my intention to not only give a sketch of the Supreme Court since its first session in May, 1820, but to say something about the trial courts, the judges thereof and some of the leading members of the Bar; but after entering upon the preparation of this address, I realized that this would extend my remarks to such a degree as to perhaps tax your patience, and I have even abandoned a biographical sketch of the members of the Supreme Court. It is a deplorable fact that Alabama has no complete history of her Bench and Bar, and it is, therefore, difficult to obtain accurate data as to many of our most eminent lawyers and jurists whose acts and deeds have added lustre to our jurisprudence, and such history should not only be supplied but should be a labor of love by some member of this Association. (1)

By an Act of Congress, approved March 2, 1819, the then territory of Alabama was admitted as a State and the time for the election of delegates to the first Constitutional Convention was fixed for the first Monday and Tuesday of the following May and were apportioned among the counties then existing, as follows: Madison 8 representatives, Monroe 4, Blount 3, Limestone 3, Shelby 3, Montgomery

2, Washington 2, Tuscaloosa 2, Lawrence 2, Franklin 2, Cocato 2, Clark 2, Baldwin 1, Cahaba 1, Conecuh 1, Dallas 1, Marengo 1, Marion 1, Mobile 1, Lauderdale 1, St. Clair 1, and Autauga 1.

The delegates so elected assembled at Huntsville and on August the 2nd finally adopted the Costitution of 1819, and which was signed by J. W. Walker, President, and John Campbell, Secretary.

Article 5 of said Constitution relates to the judicial department and vested the powers in one Supreme Court, circuit courts to be held in each county in the State, and inferior courts of law and equity, to consist of not more than five members. It also authorized the Legislature to provide for chancery courts, a probate court for each county and such number of justices of the peace in each county as was deemed necessary. We have had several Constitutions since then, but there have been but few radical changes in the judicial system, except that the more recent ones are mandatory as to probate, and justice of the peace courts and the establishment of which is not left to legislative discretion. The first Constitution also authorized the circuit judges to constitute the Supreme Court, while the latter ones provide for separate and distinct judges of all courts. The Constitution of 1819 also prohibited the appointment of or continuance in office of any judge who shall have arrived at the age of seventy years, while there is no such limitation in the more recent Constitutions. Section 13, Article 5, of the Constitution of 1819 also provided that the judges of the several courts in the State should hold office during good behavior. This section, however, was amended in 1830 and the term of office was fixed for six years, which is the term under the present Constitution and which has been the term ever since the adoption of said amendment. The principal change since that time being with reference to the manner of electing judges, and which will be noted later on.

It has been universally believed, that the amendment to

the Constitution of 1819, cutting down the life term of office to six years, was the result of public dissatisfaction with the Supreme Court as it then existed because of decisions enforcing contracts for the payment of excessive interest, the statute against usury having been repealed. Indeed, impeachment charges were brought against the judges, and vigorously and bitterly prosecuted, the moving spirit being one Kelly, a man of prominence and a victim of some of said contracts. For an interesting and instructive account of the trial and incidents leading up to and connected with same, I refer to a paper read by the Hon. Henderson M. Somerville before the State Bar Association a few years since, and which should be preserved and perpetuated as a part of our judicial history. To the credit of those judges, they were not only vindicated but three of them composed the first real Supreme Court as differently constituted by the subsequent act of reorganization. It should also be said to the credit of the people that, while jealous of the power of the life tenure of office after these judges were vidicated many of them were kept in office and were honored and respected.

SUPREME COURT. The Constitution of 1819, under which the State was admitted to the Union, provided among other things that the judicial power should be vested in a Supreme Court, together with such inferior courts as might be constituted by the general assembly. The judges of the circuit courts were required to serve as members of the Supreme Court, stated meetings being held at the seat of government to hear causes on appeal. The judges of the Supreme Court were for many years elected by the general assembly—until 1868, in fact—when the reconstruction constitution adopted that year brought in the very radical change in the appointment by having them elected at a general election by the people.

The first term of the Supreme Court was held at Cahaba, then the State Capital, on the second Monday in May, 1820. There were present Hons. C. C. Clay, Reuben Saf-

fold, Henry Y. Webb and Richard Ellis. Hon. A. S. Lipscomb, the remaining circuit judge, was absent at this session. Hon. C. C. Clay was appointed chief justice. In 1821 a sixth circuit was created, of which Hon. Anderson Crenshaw was elected judge. Passing in hurried review the membership of the court from its foundation as thus indicated, the records show a large number of names familiar to the judicial history of the State. Some of these have left the impress of their thought and character upon the wider field of American law. Judge Webb died in 1823 and was succeeded by Hon. Henry Minor who was in his turn succeeded, as soon as the general assembly convened, by Hon. John Gayle. Chief Justice Clay resigned in 1823 and was succeeded in that office by Judge Lipscomb.

At the election held in 1825, the first regular election by the general assembly under the Constitution since the creation of the Supreme Court, the following circuit judges were elected: Hons. A. S. Lipscomb, Reubeu Saffold, John Gayle, John White, John M. Taylor and Anderson Crenshaw. In 1828 a seventh circuit was established, of which Hon. Sion L. Perry was elected judge. In the same year Judge Gayle resigned and Hon. Henry W. Collier was elected to succeed him.

In 1832 the court was entirely reorganized and made a separate court, to consist of three judges with terms of office for six years. Judges Lipscomb, Saffold and Taylor were elected, Judge Lipscomb again receiving the appointment as chief justice. In 1834 Judge Taylor resigned and was succeeded by Hon. Harry I. Thornton. In the latter part of the same year Judge Lipscomb resigned and was succeeded by Hon. Henry Hitchcock, Judge Saffold being promoted to the post of chief justice. In 1836 Hon. A. F. Hopkins succeeded Judge Thornton, and in the same year Judge Saffold resigned, being succeeded by Hon. Henry W. Collier, Judge Hitchcock becoming chief justice. In 1837 Judge Hitchcock resigned and was succeeded by Hon.

Henry Goldthwaite, Judge Hopkins being advanced to the chief justiceship. In June of the same year Chief Justice Hopkins resigned, being succeeded by Hon. J. J. Ormond, Judge Collier becoming chief justice.

In 1843 Judge Goldthwaite resigned and was succeeded by Hon. C. C. Clay. Judge Goldthwaite had resigned to become his party's candidate for Congress in the Mobile district. After a contest of memorable vigor and dash, he suffered a defeat and then became a candidate for his old seat on the bench. He defeated Judge Clay before the genral assmbly. He died of yellow fever in 1847, and was succeeded by Hon. Edward S. Dargan. Judge Ormond declined a re-election and was succeeded by Hon. William P. Chilton. In 1849 Judge Dargan succeeded Judge Collier as chief justice, Hon. Silas Parsons taking the place of associate vacated by Dargan. Parsons was succeeded in 1851 by Hon. Daniel Coleman, who was in his turn succeeded by Hon. George Goldthwaite. In the same year, 1851, the number of judges was increased to five, Hon. David P. Ligon and John D. Phelan being the additional members. In 1852 Chief Justice Dargan resigned and was succeeded in that office by Judge Chilton, Hon. Lyman Gibbons being appointed associate justice. In 1853 the membership of the court was reduced by law to three, and Hon. Samuel F. Rice bécame the third member. In January, 1856, Judge Goldthwaite succeeded Judge Chilton as chief justice, and Hon. A. J. Walker became an associate justice. Judge Goldthwaite resigned almost immediately and was succeeded by Hon. George W. Stone. Judge Rice became chief justice. Judge Rice, resigning in Jaanuary, 1859, was succeeded by A. J. Walker, Hon. R. W. Walker receiving the appointment thus vacated. The war wrought no change to speak of in the judicial fabric during the existence of actual hostilities. In 1863, Judge R. W. Walker resigned and was succeeded by Hon. John D. Pelham. The Legislature that convened at the close of the war

elected, as members of the Supreme Court, Hons. A. J. Walker, William M. Byrd and Thomas J. Judge.

By the "reconstruction" constitution of 1868, the election of judges was committed to the people, and on an election held Hons. E. W. Peck, Thomas M. Peters and B. F. Saffold were returned as judges of the Supreme Court. In 1873 Judge Peck resigned, Judge Peters became chief justice, and Hon. R. C. Brickell was appointed to fill the vacancy. At the general election of 1874 Judge Brickell was elected chief justice, and Hons. Thomas J. Judge and Amos R. Manning associate justices. In March, 1876, Judge Judge died and was succeeded by Hon. George W. Stone. In 1880 Judge Manning died and was succeeded by Hon. Henderson M. Somerville. On October 25, 1884, Judge Brickell resigned, Judge Stone becoming chief justice, and Hon. David Clopton was appointed associate. In 1889 the number of judges was increased to four, and Hon. Thomas N. McClellan, then serving as attorney general, was appointed to the new place. In July, 1890, Judge Somerville resigned to accept a post under the general government and Hon. Thos. W. Coleman was appointed to succeed him. In February, 1891, the number of judges was once more raised to five, and Richard W. Walker was appointed to the new judgeship. Judge Clopton died in 1892, and Judge W. S. Thorington was appointed to succeed him. At the August election, 1892, the following judges were elected: Chief Justice, George W. Stone; Associate Justices, Thomas W. Coleman, Thomas N. McClellan, J. B. Head and Jonathan Haralson.

In 1898 Thomas N. McClellan was elected Chief Justice and Jonathan Haralson, John R. Tyson, H. A. Sharpe and Jas. R. Dowdell were elected associates. The Legislature of 1903 increased the number of justices from five to seven to go into effect after the general election of 1904. In the election of 1904 Thomas N. McClellan was elected Chief Justice and Jonathan Haralson, John R. Tyson, James R. Dowdell, R. T. Simpson, John C. Anderson and N. D. Den-

son were elected Associates. In order to comply with the Constitution as to the arrangement of the terms, and upon casting lots, Anderson and Denson got six-year terms, Haralson and Simpson four years and Tyson and Dowdell two years. Thomas N. McClellan died in 1906 and S. D. Weakley was appointed to succeed him until the next general election, at which John R. Tyson was elected Chief Justice and Jas. R. Dowdell and Thomas C. McClellan were elected Associates. In 1908 R. T. Simpson and J. J. Mayfield were elected. In 1909 John R. Tyson resigned and James R. Dowdell was appointed to succeed him, A. D. Sayre of Montgomery, being appointed to succeed Dowdell as Associate. In September, 1909, N. D. Denson resigned and A. A. Evans of Barbour, was appointed to succeed him. Ormond Somerville succeeded A. A. Evans in 1910. R. T. Simpson died in 1912, and was succeeded by Edward de Graffenreid, Judge William H. Thomas succeeding Judge de Graffenreid in 1914. Chief Justice Dowdell resigned in January, 1914, and John C. Anderson became Chief Justice, L. D. Gardner succeeding Anderson as Associate Justice. Judge Mayfield resigned in 1919 to become Code Commissioner, and was succeeded by Joel B. Brown. The Court at present is composed of John C. Anderson, Chief Justice; Thomas C. McClellan, A. D. Sayre, Ormond Somerville, L. D. Gardner, W. H. Thomas and J. B. Brown, Associate Justices.

Taking up some of the curious, if not important, facts touching the composition of the Supreme Court, note may be made of the nativity of the Chief Justices. Clay, Hopkins, Collier and Stone were born in Virginia; Lipscomb and Rice, in South Carolina; Saffold, in Georgia; Hitchcock, in Vermont; Dargan, in North Carolina; Chilton, in Kentucky; Goldthwaite, in New Hampshire; Walker and Peters, in Tennessee; Peck, in New York; Brickell, McClellan, Weakley, Tyson, Dowdell and Anderson, in Alabama.

The following Judges of the Supreme Court were at one

time or another judges of the circuit court: Henry W. Collier, Daniel Coleman, E. S. Dargan, Jno. D. Phelan, George W. Stone, George Goldthwaite, Lyman Gibbons, B. F. Saffold, Jas. B. Head, John R. Tyson, James R. Dowdell, John C. Anderson, N. D. Denson and A. A. Evans, while Judges Haralson, Sharpe, Mayfield, Sayre and Thomas each served as county or city court judges.

The following Judges of the Supreme Court also served as chancellors: Peck, Ligon, Byrd, Crenshaw, A. J. Walker, Thos. W. Coleman, Jas. R. Dowdell and L. D. Gardner. It will be observed that James R. Dowdell is the only member who had previously served both as circuit judge and chancellor.

Judges de Graffenreid and Brown had each served upon the Court of Appeals before becoming members of the Supreme Court.

Judge George Goldthwaite became a circuit judge after leaving the Supreme Court, Crenshaw a chancellor and Sharpe judge of the city court.

The following Supreme Court Judges became Governor of the State: C. C. Clay, John Gayle and Henry Collier; while C. C. Clay and George Goldthwaite became United States Senators also.

The surviving ex-members of the Court are Thomas W. Coleman, R. W. Walker, S. D. Weakley, John R. Tyson, J. R. Dowdell, N. D. Denson, A. A. Evans, Edward de Graffenreid and Jas. J. Mayfield.

It should also be noted that the people of Alabama have, as a rule, been free from sectionalism or partisanship in the selection of the members of their highest Court. Hitchcock and both of the Goldthwaites were from New England; Peck and Gibbons from New York, and Manning from New Jersey; while Hopkins, Chilton, Thornton, Ormond, R. W. Walker, and perhaps others, though Whigs, were selected by democratic governors or legislatures, and Brickell, the first democratic member of the Court after

"reconstruction," was appointed by a republican governor.

Another incident worthy of note is the fact that when Judge Stone was first elected a member of the Court by the Legislature in the '50's, Brickell, Clopton and others were his opponents, and on the final ballot Stone was elected over Brickell by the narrow margin of two votes, and when Judge Stone was replaced upon the Court after the war Brickell was Chief Justice, and when Brickell resigned and Stone was appointed to succeed him, Clopton was appointed an Associate to succeed Judge Stone.

Again, C. C. Clay, first Chief Justice, resigned from the Court in 1823, subsequently becoming Congressman, Governor and Senator, and in 1843, upon the resignation of Henry Goldthwaite, who resigned in order to run for Congress from the Mobile District, was replaced upon the bench and Henry Goldthwaite defeated him before the next Legislature. The result was, that after having filled practically every high office in the State, and being replaced where he started, he was subsequently defeated. The result was not due, however, to the unpopularity of Governor Clay, but to the fact, no doubt, that having been in politics for twenty years he was not as well qualified for the office as Judge Goldthwaite who had been constantly on the bench for years, with the exception of the few months he spent in prosecuting his canvass for Congress.

While Alabama has had twenty Chief Justices during the past hundred years, the service of many of them has been quite brief. It seems that the salary was so small, at least during the first half of the century that most of them, after attaining the position, retired in order to practice law or run for offices less onerous and laborious. Lipscomb, Collier and A. J. Walker are the only Chief Justices who served over two or three years, during the first half of the century, the other serving only one or two years, while Judge George Goldthwaite occupied the office but thir-

teen days. On the other hand, Brickell, Stone and T. N, McClellan consumed, as Chief Justices, the greater part of the last half of the century. Judge Stone served the longest period of any member of the Court, having served twenty-four years, six years before and nearly eighteen after the war, though there was an interim in his career; but not counting the service he rendered before the war, his last period was the longest continuous service, notwithstanding he was sixty-six years of age when coming on the bench the last time. Thos. N. McClellan comes next in length of service, as he served continuously as Associate and Chief Justice from 1889 to February, 1906. It is also a remarkable fact that out of the twenty Chief Justices the State has had, George W. Stone and Thos. N. McClellan were the only two who died in judicial harness, and of the great number of Associatee Justices we have had H. Goldthwaite, Thos. J. Judge, Amos R. Manning, David Clopton and R. T. Simpson seem to have been the only Associates who died while on the bench.

Mention should also be made of the Associates who served a period of approximately ten years or longer, and whose work is lasting and efficient, and who are John J. Ormond, Henry Goldthwaite, Henderson M. Somerville, David Clopton, Thos. W. Coleman, Jonathan Haralson, Thos. C. McClellan, J. J. Mayfield, A. D. Sayre and Ormond Somerville.

WHILE THE PEOPLE HAVE BEEN JEALOUS OF THEIR RIGHTS AS TO THE SELECTCION OF JUDGES, THE PRIVILEGE HAS SELDOM BEEN ABUSED. (2)

The people not only disapproved the life tenure, but have, for the last fifty-two years, exacted the right to vote directly for their judges. Not only was this the case under the Constitution of 1867 and 1875, but the Constitutional Convention of 1901, composed of one hundred and fifty members, over three-fifths of same being lawyers, curtailed the appointive power in case of vacancies from

the unexpired term to the next general election occurring more than six months after the vacancy. On the other hand, however, they have been most patriotic and conservative in dealing with the Judiciary and have not been swept off their feet by fads, prejudices or political upheaval. As above noted, after the judges whom Kelly sought to impeach had been vindicated, they were all re-elected, notwithstanding it is thought that the incident brought about the amendment of the Constitution abolishing the life tenure. In the year 1841 when the Supreme Court was composed of Collier, Ormond and Henry Goldthwaite, a decision was rendered relating to certain cotton transactions with the State Bank which was most unpopular, and brought forth a scurrilous attack upon the majority of the Court, Collier and Ormond, Goldthwaite having dissented, but at the next election they were both re-elected, and Chief Justice Collier was, a few years thereafter, elected Governor by an almost unanimous vote.

Again, many of us can recall the political upheaval of 1892 which almost amounted to a revolution among the white people of the State. The convention plan then existed, the regular or organized democracy nominated a full ticket, and a certain faction bolted and put out an opposition ticket which swept nearly every white county in the State, the regular ticket being elected by large majorities from the black counties, and which fact no doubt hastened the Constitutional Convention for the elimination of a certain class of voters, and which in the end led to the primary system for the nomination of our officers. Yet, this bolting faction, no doubt representing a majority of the white voters of the State, had confidence in the integrity and ability of Stone, McClellan, Coleman, Head and Haralson, the nominees of the organized democracy, and did not oppose them, making their fight along other lines and against other candidates. The result was, that after the ratification of the Constitution of 1901, the primary system of nominating officers, including judges, was estab-

lished and has been adhered to ever since, except in 1912. Every one knows that a democratic nomination is equivalent to an election, and that the general election is but a pro forma ratification of the nomination; therefore, in order to meet the spirit, if not the letter, of the Constitution, a primary election is essential to the selection of judges by the people. The voters of Alabama have been and ever will be responsive to the advice and suggestion of the Bar as to the seleection of judges, and the proper activity on the part of the lawyers in their respective counties will always accomplish results. A few letters or postal cards from respectable lawyers to a few of the leading men in each precinct will nearly always insure favorable returns, and the lawyers are largely responsible for the nomination of the judges whether by convention or primaries. Do not misunderstand me: I am not pleading for a continuation of the primary system from a selfish standpoint. As an officer, present or prospective, I am supremely indifferent either as to the method of selection or the result, as I have never felt dependent upon office holding for a livelihood, and should the people of Alabama see fit to retire me either by a convention or at the polls, I will accept the result without a murmur. Nor would I, or any other self-respecting judge, hold the position if inimicable to a majority of the lawyers of the State; but any single member of the Court is a mere atom when compared with the perpetuation of a system which is essential to the preservation of the integrity and purity of the Judiciary; and any judge who holds his commission directly from a majority of the unselfish voters of the State is bound to be more independent than one who may owe his nomination to a clique or a few political leaders who may dominate beat meetings and conventions. This, therefore, is intended as a mere admonition to the Bar against constantly placing themselves on record as being in favor of depriving the people of the power to exercise their constitutional rights; in other words, from continually in-

forming them that they are unfit and incapable of selecting their judges. As long as you take them into your confidence and let them feel like they are exercising their constitutional right, you will find them responsive and ready and willing to yield to your counsel and advice; but should you prevail upon the Executive Committee to deprive them of a direct voice in the matter, and while they may acquiesce for a short time, the very moment that the impression is created that the politicians, for certain selfish interests, are controlling and nominating the Judiciary of the State, there will be an uprising like unto a cyclone which will sweep from the face of the earth everything within its wake.

Moreover, as we enter upon the second century of statehood we confront a new factor in our elections. It will be but a few moths before our women will be emancipated and will, therefore, have a voice in our future elections, and there should not be continued efforts to deprive them of their rights after the ratification of the Nineteenth Amendment, by compelling them to attend disorderly beat meetings and county conventions instead of a legally regulated primary election for the purpose of expressing their choice not only for those who make and execute the laws, but for those who enforce and construe them as well. Why anyone should be surprised that the right of our women to vote will soon be recognized, and why anyone has opposed this righteous movement, especially some of the women, passeth all understanding. Legislation for the last half century has established the separate property rights of women and said property has always been taxed for governmental purposes, and from the days long before the Boston Tea Party, our people have insisted that where there is taxation there should also be representation. Every avenue has been, in recent years, opened to women. They are becoming lawyers, doctors, merchants and teachers. The American Bar Association has opened its doors to them. They have filled the positions into which they

have gone acceptably and well. In peace and in war they have shown that in every branch of relief work women are not unexcelled in skill, judgment, endurance and courage. I have no word of censure for those who have opposed this movement, but woman suffrage is now a condition rather than a theory, and it is the record of the American lawyer to uphold and enforce the law whether entirely acceptable to him or not, and I believe that the lawyers of Alabama will see to it that this new plan, when incorporated in our Federal Constitution, will become effective in spirit as well as letter. A careful reading of the cases of Neal vs. Delaware, 103 U. S. 370, and Guin vs. United States, 238 U. S. 362, should dispel all fear that this amendment will destroy our present constitutional barriers against the registration of the vicious and ignorant voter, male or female. I also believe that our women who will exercise their right of suffrage, whether heretofore favoring or opposing same, will do so intelligently and patriotically.

I do not wish to impress you, however, with the idea that our present plan of nominating judges in a general primary is by any means perfect. The trouble is that when thrown into a general primary the mind of the average voter becomes centered upon candidates, State and county, for offices of a political nature, losing to a great extent interest in the judicial candidates. The ballots are usually long, and in the absence of special instructions many of the voters either take a chance shot when they reach the names of the judicial candidates, or frequently fail to vote at all. Indeed, lawyers themselves sometimes become so engrossed and wrought up in contests for Governor, Senator and other political offices as to neglect to impress upon the layman the merits or demerits of the judicial candidates. In my opinion, the ideal plan would be a seperate judicial primary a considerable time before or after the general primary. This would not only remove the judges to a great extent from politics, but the public mind would be focused upon them alone, and every one who would feel

interest enough in the question to turn out and vote would post himself in advance and vote intelligently. The cost of such a primary should not be much, especially at a time when all of the trial judges would also be nominated, but the expenditure of a little money would be well invested in a system which would guarantee the selection of the best men for the office of judge.

COURT OF APPEALS.

The Legislature of 1911, acting largely upon the suggestion of your Association, established, pursuant to the provision of section 140 of the Constitution, a Court of Appeals composed of three judges, which was intended to relieve the Supreme Court. When this court was first created there was considerable difference of opinion as to the scope of its power and jurisdiction, and in fact there was a division of opinion on the subject among the judges of the Supreme Court. The question was finally presented and considered from three angles: First, That it had absolute and final jurisdiction co-ordinate with the Supreme Court, and as to which the Supreme Court would exercise no revisory power. Second, That it was a court of final appellate jurisdiction except in so far as the Supreme Court might exercise its revisory powers expressly reserved unto it by section 140 of the Constitution, and which was largely discretionary with the Supreme Court, and which revisory powers the creative act contemplated to the extent of maintaining harmony between the opinions of the two courts. Third, That said court was not only inferior to the Supreme Court, but all of its decisions should be reviewed and revised as to law and fact by the Supreme Court. When the matter was finally presented for determination a majority of the Supreme Court, in the case of L. N. Ry. vs. Williams, 176 Ala. 631, adopted theory No. 2 as the proper as well as the most practical solution of the question. To have adopted the first theory would not

only have been in the teeth of section 140 of the Constitution, but would have in fact established two separate and distinct Supreme Courts, each independent of the other. On the other hand, had the third contention been accepted, the Court of Appeals would have been a burden instead of a relief. To have held that all of its decisions should be reviewed de novo would render it a mere temporary stopping place between the trial court and the Supreme Court, and would, in effect, give parties two appeals in the small cases and only one in the more important ones. The result has been that this court has to a great extent proven a considerable relief to the Supreme Court, though not as great as might be expected when the many applications for certiorari are considered. It is true that many of them are denied, but much time is nevertheless consumed in the consideration of same regardless of the results. The court, however, has been well manned and has been of considerable relief to the Suprme Court.

R. W. Walkr, Ed de Graffenereid and John Pelham were appointed judges upon the creation of same. Judge de Graffenreid was appointed to the Supreme Court upon the death of Judge Simpson, and E. P. Thomas succeeded Judge de Graffenreid. Judge J. B. Brown became a member of the court by election, and B. P. Crum served as a member during a short period. Judges Pelham, Brown and C. R. Bricken were elected in the geenral election of 1916. Judge Thomas resigned in 1916 and was succeeded by Judge R. V. Evans. Judge Pelham died in 1917 and was succeeded by W. H. Samford. Judge Brown was appointed to the Supreme Court in 1919 to succeed Judge Mayfield, and was succeeded by H. P. Merritt. Hon. Alex. Troy, your Secretary, was made clerk of said court upon its organization, which position he now holds.

JUNIUS M. RIGGS, MARSHAL AND LIBRARIAN

Any sketch or synopsis of the Supreme Court would be incomplete which made no mention of the above named

Librarian and Marshal, who has spent the last half of the century in the service of the Court, and has thereby become a part of the judicial history of the State. Our library has increased ten-fold in volume under his administration. He has been faithful and efficient in the discharge of his official duties, and I am satisfied that every lawyer in Alabama will testify to his uniform courtesy and attention to them while attending court or using the library. I first met Mr. Riggs when appearing before the Supreme Court in my first case thirty years ago, and was surprised but pleased that he should be so kind, attentive and polite to a young country lawyer. I have known him well ever since and have come in daily contact with him for the past fifteen years, and have never known a more faithful public official.

ROBERT F. LIGON, CLERK.

This gentleman has been Clerk of the Court for nearly a quarter of a century, and has proven himself capable and efficient. He has relieved the Court, and especially the Chief Justice, of much of the detail which would necessarily have fallen to us with a less competent clerk.

PAST, PRESENT AND FUTURE.

I believe it was Abe Martin who said that "An optimist during this bone-dry period was the fellow who carried a corkscrew on his key ring," and while perhaps not of Abe's type I am by no means a pessimist, and hope that I shall never reach that mental condition of living solely in the past, seeing no good in the present, and entertaining no hope for the future. Our predecessors have unquestionably put our jurisprudence in the foremost rank, and the past has produced men like Chief Justices Brickell, Stone and McClellan, who not only measure up with the greatest State judges but either of whom would have adorned the

United States Supreme Court Bench, and it may be a long time before we have their equal; but they, nor the court when they were members thereof, were infalible or immune from mistakes. The list of overruled or qualified cases covering nearly one hundred pages of First Mayfield's Digest will disclose the fact that the present or modern court does not monopolize in errors and mistakes.

Again, while the strength of a chain is usually tested by its weakest link, when comparison is had between respective courts the test should not be by measuring the weakest member of one with the strongest of the other, for while we may have no member of the modern courts who possesses the mental endowments of a few of our judges of the past, I am not willing to concede or admit a general decadence of the judiciary or the legal profession generally. If you admit the one you must admit the other, as our judges are selected from the lawyers and to a large extent through the influence of the lawyers, and in my opinion the present Bar of Alabama is much more advanced and proficient than the Bar of the past. You may not perhaps have in your ranks as many men of the oraatorical or forensic type as was developed during the early history of the State, but as all-round lawyers I do not think that the past can compare with the present. Our laws have advanced and progressed and our lawyers have kept pace with the times, and are well versed in practice and principles never known to or thought of by your predecessors.

It was but a few years ago when we had no law school in Alabama, and almost anyone could be admitted to the Bar. Now we have a law school with a two or three year course, and in lieu of the old system of appointing a committee on the circuit to crack jokes with an applicant and recommend his admission regardless of his legal knowledge, we have a State Board of Examiners who require a most thorough and rigid examination of the applicants.

It should also be noted that during the first half of the

century a few lawyers usually residing at the capital did practically all of the practice before the Supreme Court. Now, the average lawyer from the remotest counties practices before the Supreme Court without the aid or assistance of the old lawyers who had heretofore been regarded as specialists in handling cases before the appellate court.

This is an advanced, and I might say an industrial and scientific age, and the present day lawyers and judges have problems to solve that were never encountered by the bench and bar of the past, and we can at least live in hope that our progeny may give us some credit for handing down to them arguments and decisions which may be of some benefit to the future.

Again, many of you can recall that when an appeal was taken a few years ago parties had to wait a considerable time for a decision, seldom less than a year, sometimes several years. Now, the average case is decided by the Supreme Court within a few months after the submission of the cause, it being the exception when there is a delay of a year, and with the co-operation and assistance of the Bar there is no reason why the work cannot be more expeditious and at the same time receive a more general consideration by the court. When counsel begin to attach less importance to practice and procedure than to the main meritorious legal questions involved in their cases and narrow the issues and present same by oral argument, the court can frequently decide the case immediately and prepare the opinion afterwards, thus making it the decision and opinion of the court rather than what is sometimes termed a one-judge opinion.

While we all look upon Marshall and Taney as the great exponents of our Constitution and laws during the formative period of our government, and without intending to detract from their fame in the slightest, I believe that a close consideration by an unbiased lawyer of the opinions of our present Chief Justice White will convince that his is the master judicial mind of America, past and present.

Again, I do not think that the mantle of Wirt, Black, Brewster, Garland and Olney could have fallen upon a more worthy and capable man than our present Attorney General, A. Mitchell Palmer. He has handled our judicial department at this critical time with such firmness and ability as to demonstrate that he is not only the peer of any man who ever occupied that exalted office, but is big and broad enough for any office within the gift of the American people.

CONCLUSION.

And now, gentlemen of this Association, speaking for the Court, although our duties are not the same but in many respects variant and governed by different rules of action, yet they are in the same field, and we are all bound, or should be bound, by the great unchanging and unchangeable code of morals, one of the precepts of which code, by way of eminence, has obtained the name of the "Golden Rule." The duties of the Court are so admirably described by Sir Edward Coke in his Epilogue to the fourth part of his Institutes, in which he addresses the Judges and Justices of the Realm of England, that I beg leave to read them in his own quaint words. He says: "And you, honorable and reverend Judges and Justices, that do, or shall, sit in the High Tribunals and Courts and Seats of Justice, fear not to do right to all, and to deliver your opinion justly, according to the laws; for fear is nothing but a betraying of the succors that reason should afford. And if you shall sincerely execute justice, be assured of three things: First, though some may malign you, yet God will give you his blessings; secondly, that though thereby you may offend great men and favorites, yet you shall have the favorable kindness of the Almighty and be His favorites; and lastly, that in so doing, against all scandalous complaints and pragmatical devices against you, God will defend you as with a shield."

With such advice and instructions to guide and direct us, if honestly pursued and followed, there need be little fear of falling into many or grave errors.

Mr. Justice Blackstone speaks of our profession as highly honorable; and it has ever been distinguished for the talents, learning, and courteous manners of its members. Among those now in the meridian of professional life, as well as those just entering upon it, how does the heart swell with virtuous emulation at the mention of such names as the Walkers, Houston, Pryor, McClung, the Smiths, Hamiltons, Yancey, Watts, Tompkins, Percy, and a bright cloud of names that cannot here be mentioned, if not in every respect equally eminent, at least equally worthy of the admiration, not of the profession only, but of all good and great men.

With such reflections as these to stir up in us a just and noble ambition, let us enter upon the new century with a true and earnest desire, with the blessing of a good Providence, not only to merit and secure the good opinion of our fellow men, but, also, the approval of our own conscience.

LIBRARY OF CONGRESS
0 033 239 149 5